S. HRG. 100-182

TOSHIBA–KONGSBERG TECHNOLOGY DIVERSION CASE

HEARING

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL FINANCE AND MONETARY POLICY

OF THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

THE DIVERSIONS OF HIGH TECHNOLOGY PRODUCTS TO THE SOVIET UNION THAT WILL HAVE AN EXTRAORDINARY IMPACT ON OUR NATIONAL SECURITY, DONE UNDER A COVER OF DECEPTION BY TWO COMPANIES AND THEIR DISREGARD FOR THE ESTABLISHED STANDARDS THAT GOVERN THE OPERATIONS OF COCOM

JUNE 17, 1987

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TOSHIBA-KONGSBERG TECHNOLOGY DIVERSION CASE

WEDNESDAY, JUNE 17, 1987

U.S. SENATE, COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS, SUBCOMMITTEE ON INTERNATIONAL FINANCE AND MONETARY POLICY,

Washington, DC.

The subcommittee met at 2:10 p.m., pursuant to notice, in room SD-538, Dirksen Senate Office Building, Senator Paul S. Sarbanes (chairman of the subcommittee) presiding.

Present: Senators Sarbanes, Garn, Bond, Heinz, Shelby, and Dixon.

OPENING STATEMENT OF SENATOR SARBANES

Senator SARBANES. This subcommittee hearing, the Subcommittee on International Finance and Monetary Policy has been called to examine a very serious matter concerning the implications for U.S. export control policy of the diversion of advanced milling machinery by a Japanese company and a Norwegian company to the Soviet Union.

I want to acknowledge the letter that was sent to me by Senators Garn and Gramm awhile ago asking that we hold a hearing on this issue, a request with which I very strongly agree, and I regret that given the schedule of the committee and other pressing business we weren't able to have it any sooner, but we have tried to move as expeditiously as possible.

I think the matter we are going to look at today represents one of the most egregious diversions of high technology products to the Soviet Union to have taken place in a long time and it requires a careful exposition by the witnesses before us today of exactly how this occurred, what led it to take place and what the implications are of what has transpired.

Apparently it has had an extraordinary impact on national security concerns done under a cover of deception by the two companies and disregard for the established standards that govern the operations of the Coordinating Committee, [CoCom], and as best as one can tell thus far at least with very little sanctions resulting.

We have with us an able panel, Assistant Secretary of Commerce for Trade Administration, Dr. Paul Freedenberg, Allan Wendt, Senior Representative for Strategic Technology Policy in the State Department, and the Deputy Under Secretary of Defense for Trade Security Policy, Dr. Steve Bryen.

Gentlemen, we are pleased to have you before the subcommittee.

Before we hear from you I'll turn to Senator Garn, he has a statement he might wish to make.

OPENING STATEMENT OF SENATOR GARN

Senator GARN. Thank you very much, Mr. Chairman.

First of all, let me acknowledge your efforts in holding this hearing. I know it has been difficult. The chairman has been involved in the Iran hearings, which I'm sure everybody is aware have been extremely time consuming over a number of weeks.

So I appreciate his and Senator Proxmire's efforts at being able to put this hearing together.

I certainly believe that it's important that the committee be made aware of the implications of the Toshiba-Kongsberg technology diversion. This information is particularly important as we prepare to debate the U.S. export control policy as a portion of the overall trade bill.

I have been interested in the area of technology transfer for a number of years. After months of exhaustive negotiation with the House 2 years ago, the security provisions of the Export Administration Act were strengthened. The Department of Defense was given some oversight in reviewing critical technology exports to the Eastern bloc. The bill that this committee reported out significantly reduces the role of the Department of Defense and generally liberalizes our export control policy.

I'm very concerned about the potential effect of this legislation on our national security. I believe that the diversion of technology in the Toshiba-Kongsberg case raises questions about the soundness of the amendments that would place even greater reliance on CoCom. Although these amendments would not affect this case directly since the technology was non-United States, there is a general reduction in U.S. licensing of goods shipped to and within CoCom.

The Toshiba-Kongsberg case is an example of why I don't believe it is wise to weaken our export controls. This technology was successfully diverted under existing licensing provisions. Yet, instead of strengthening the procedures, we are moving in the other direction.

I certainly welcome the opportunity to listen to this panel, and I think they will be able to shed some light on the seriousness of this issue prior to the floor debate.

The chairman certainly termed it correctly when he said this is one of the most egregious of diversions. Certainly in the 12 years I have been in the Senate I have seen none that I believe is worse.

Thank you, Mr. Chairman.

Senator SARBANES. Thank you, Senator Garn.

Gentlemen, we are prepared to hear from you.

Unless you've worked out a different order, I think maybe we'll go with the State Department, the Defense Department and then the Commerce Department in that order.

Mr. Wendt, why don't you proceed.

STATEMENT OF E. ALLAN WENDT, SENIOR REPRESENTATIVE FOR STRATEGIC TECHNOLOGY POLICY

Mr. WENDT. Thank you very much, Mr. Chairman and members of the committee.

I am pleased to have this opportunity to appear before you today to speak about the policy implications of the Toshiba-Kongsberg diversion case for the United States and the security of Western countries.

POLICY IMPLICATIONS

The diversion of sophisticated marine propeller milling machines and related computer technology to the Soviet Union by three Japanese companies and one Norwegian company raises issues that I would like to address in my statement and in the rest of the hearing.

First of all, let me say a few words about the Japanese and Norwegian export control systems.

In light of the seriousness of this case, both Japan and Norway have reviewed their export control mechanisms and announced steps designed to improve their ability to detect and prevent such violations.

As an immediate step Japan has formed an additional high-level strategic goods export council which since June 1, has examined all applications for exports to CoCom-proscribed countries involving strategic goods such as high-level computers, machine tools, semiconductor manufacturing, and nuclear energy related equipment.

Japanese authorities have also pledged to carefully examine their system to improve their ability to prevent diversions of sensitive technology.

The Norwegian Government has announced the appointment of a special commission which is to conduct an inquiry into internal export control practices and regulations and make recommendations for improvements.

The Governments of Japan and Norway share our concern over the loss of strategic technology and we believe they will continue to cooperate with us to improve Western ability to combat illegal sales of such technology.

Mr. Chairman, such a serious diversion as this one, which did not involve any U.S. goods or technology, reinforces the notion, in our view, that the United States cannot pursue export controls all by itself. The need for the cooperation of our partners in CoCom is underscored by this incident.

The effective control of technology through a voluntary mechanism such as CoCom depends on the cooperation of all members to ensure uniform enforcement of principles.

We believe that CoCom efforts combined with supplementary agreements with countries outside CoCom to coordinate with the group where possible are the most effective means of dealing with problems of this kind.

The U.S. Government is continuing its efforts to increase the effectiveness of CoCom and is encouraging improvements in the export control systems of each of the individual member countries.

We are also negotiating with key non-CoCom nations to deal with Soviet efforts to exploit CoCom level products of the newly industrializing countries and to prevent diversions through their ports.

ENFORCEMENT ACTIONS TAKEN

Now with regard to the actions of the Japanese and Norwegian Governments, I can say that the two Governments have already taken several enforcement actions against the firms and the individuals involved in this diversion.

Japan has taken the following steps:

It has prohibited the Toshiba Machine Co. from conducting any commerce with the Soviet bloc for a year beginning May 22, 1987.

The company can deliver no goods and provide no spare parts or servicing in CoCom-proscribed countries during this 1-year period.

Further, the Japanese Government has prohibited C. Itoh, one of Japan's largest trading companies from exporting any machine tools to the Soviet bloc for 3 months beginning May 22 of this year.

I should note, Mr. Chairman, that this action restricts exports of machine tools even below the prohibition level embargoed by CoCom.

The Japanese Government has arrested and charged two senior Toshiba Machine Co. executives and announced the indictment of four other Toshiba Machine officials and three Wako Koeki officials.

The Government has also issued a letter of reprimand to the third company involved in the diversion, the company I just mentioned, Wako Koeki.

Norway has taken the following steps:

Closed down the Kongsberg Trading Co., including its Moscow office and terminated all software and hardware support activities for equipment already delivered.

Kongsberg is undergoing reorganization and will become solely a defense equipment organization with no dealings, commercial or otherwise, with the Soviet Union or any Soviet bloc country.

Norway has barred all individuals who worked on sales to the Eastern bloc, whether or not involved in this case, from any future employment by Kongsberg.

The Norwegian Government has formally charged the sales manager for Kongsberg Trading Co. with providing false information to the Norwegian licensing authorities.

The Government will review all Kongsberg export licenses issued since the late 1970's.

Now, in addition, Mr. Chairman, we were advised just yesterday by senior levels of the Government of Norway that it is taking further steps.

These include the proposal of a new comprehensive export control law which will extend the statute of limitations for export control violations from 2 to 10 years, increase criminal penalties and fines against firms and individuals and apply export controls to transfer of services and technologies as well as products.

We were also informed yesterday that the Government of Norway will move immediately to tighten the Norwegian licensing

system to include random checks of internal company procedures, it will increase the number of licensing personnel by about 50 percent and it will alert Norwegian Customs to planned exports in order to permit propositioned border checks.

In conclusion, Mr. Chairman, I would like to state that while we are pleased that the two Governments have taken the steps that I have just noted, we are continuing to stress to them the importance we attach to effective steps to punish violations and prevent their recurrence.

We share a strong strategic interest with Norway and Japan and we need continued close cooperation with both governments.

We believe that unilateral U.S. actions such as the sanctions foreseen in several legislative amendments would be counterproductive. They would run contrary to the spirit and practice of multilateral controls and would most likely, in our view, weaken rather than improve our collective efforts with Japan and Norway and other CoCom partners.

That concludes my prepared statement, Mr. Chairman.

Thank you very much.

[The prepared statement of E. Allan Wendt follows:]

STATEMENT BY

E. ALLAN WENDT
DEPARTMENT OF STATE
SENIOR REPRESENTATIVE
FOR
STRATEGIC TECHNOLOGY POLICY

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL FINANCE AND MONETARY POLICY
OF THE UNITED STATES SENATE

June 17, 1987

OPENING STATEMENT

Thank you, Mr. Chairman and distinguished Members of the Committee. I am pleased to have this opportunity to appear before you today to speak about the policy implications of the Toshiba/Kongsberg diversion case for the United States and the security of Western countries.

The diversion of sophisticated marine propeller milling machines and related computer technology to the Soviet Union by three Japanese companies and one Norwegian company raises issues which I would like to address today.

I. JAPANESE AND NORWEGIAN EXPORT CONTROL SYSTEMS

In light of the seriousness of this matter, both Japan and Norway have reviewed their export control mechanisms and announced steps designed to improve their ability to detect and prevent such violations. As an immediate step, Japan has formed an additional high-level strategic goods export council, which since June 1 has examined all applications for exports to COCOM-proscribed countries involving strategic goods such as high-level computers, machine tools, semi-conductor manufacturing, and nuclear energy-related equipment. (COCOM is "The Coordinating Committee for Multilateral Strategic Export Controls" and is comprised of the NATO countries minus Iceland plus Japan. COCOM, which operates on the basis of unanimity

and confidentiality, restricts the export of strategic goods and technology to the Warsaw Pact countries, Albania, and certain Asian Communist countries.) Japanese authorities have also pledged to carefully examine their system to improve their ability to prevent diversions of sensitive technology.

The Norwegian government announced appointment of a special Commission, which is to conduct an inquiry into internal export control practices and regulations and make recommendations for improvements.

The governments of Japan and Norway share our concern over loss of strategic technology, and we believe they will continue to cooperate with us to improve Western ability to combat illegal sales of such technology.

II. IMPACT ON COCOM

Such a serious diversion as this one, which did not involve any U.S. goods or technology, reinforces the notion that this country cannot pursue export controls alone. The need for the cooperation of our partners in COCOM is underscored by this incident. The effective control of technology through a voluntary mechanism such as COCOM depends on the cooperation of all members to ensure uniform enforcement of principles. We

believe that COCOM efforts, combined with supplementary agreements with countries outside COCOM to coordinate with the group, where possible, are the most effective means of dealing with problems of this kind. The USG is continuing its efforts to increase the effectiveness of COCOM, and is encouraging improvements in the export control systems of each of the individual member countries.

We are also negotiating with key non-COCOM nations to deal with the Soviet efforts to exploit COCOM-level products of the newly-industrializing countries and to prevent diversions through their ports.

III. JAPANESE AND NORWEGIAN GOVERNMENT ACTIONS

The two governments have already taken several enforcement actions against the firms and individuals involved in the diversion.

JAPAN has taken the following steps:

- Prohibited Toshiba Machine company from conducting any commerce with the Soviet bloc for one year beginning May 22, 1987. The company can deliver no goods, and provide

no spare parts or servicing in COCOM-proscribed countries during the one year period.

- Prohibited C. Itoh, one of Japan's largest trading companies, from exporting any machine tools to the Soviet bloc for three months beginning May 22, 1987. It should be noted that this restricts exports of machine tools even below the prohibition level embargoed by COCOM.

- Arrested and charged two senior Toshiba Machine Co. executives, and announced the indictment of four other Toshiba Machine officials and three Wako Koeki officials.

- Issued a letter of reprimand to the third company involved in the diversion, Wako Koeki.

NORWAY has taken the following steps:

- Closed down Kongsberg Trading Company, including its Moscow office, and terminated all software and hardware support activities for equipment already delivered. Kongsberg is undergoing reorganization and will become solely a defense equipment corporation, with no dealings, commercial or otherwise, with the Soviet Union or any Soviet bloc country.

- Barred all individuals who worked on sales to the Eastern bloc, whether or not involved in this case, from any future employment by Kongsberg.

- Formally charged the sales manager for Kongsberg Trading Company with providing false information to the Norwegian licensing authorities.

- Will review all Kongsberg export licenses issued since the late 1970's.

In addition, senior levels of the Norwegian Government informed us yesterday that it is taking further steps. These include the proposal of a new comprehensive export control law which will:

- extend the statute of limitations for export control violations from two to ten years;

- increase criminal penalties and fines against firms and individuals;

- apply export controls to transfer of services and technologies as well as products;

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- o tighten the Norwegian licensing system to include random checks of internal company procedures;

- o increase the number of licensing personnel by about fifty percent; and,

- o alert Norwegian Customs to planned exports to permit "prepositioned" border checks.

IV. CONCLUSION

While we are pleased that the two governments have taken the steps noted above, we are continuing to stress the importance we attache to effective steps to punish violations and prevent their recurrence. We share strong strategic interests with Norway and Japan, and need continued close cooperation with both governments. We believe unilateral U.S. actions such as the sanctions foreseen in several legislative amendments would be counterproductive. They would run contrary to the spirit and practice of multilateral controls, and would most likely weaken rather than improve our collective efforts with Japan and Norway and other COCOM partners.

This concludes my prepared statement. I would be pleased to answer any questions you may have.

Senator SARBANES. Senator Dixon was here. He is meeting in the Armed Services Committee and could not stay. I have statements of Senator Dixon and Senator Proxmire to include in the record. Without objection, so ordered.

STATEMENT OF SENATOR ALAN DIXON

Senator DIXON. Mr. Chairman, I am pleased to be here as a member of the International Finance and Monetary Policy Subcommittee considers the implications for U.S. export control policy of the diversion of advanced milling machinery to the Soviet Union.

Let me say at the outset that, as a member of the Armed Services Committee, I am acutely aware of just how seriously this sale has hurt our national security. Frankly, it is impossible to overstate the damage these two companies have done to the free world just to make another sale. Toshiba, I understand, made approximately $17 million on the 1983 sale of four milling machines, but it will cost the American taxpayer many billions to regain the edge in submarine technology that sale threw away.

I also think it is vitally important, however, that we learn the proper lessons from this disaster. It is important to note that none of this technology was American. This case, therefore, gives us a chilling reminder that we cannot afford to go it alone. Controls, to be effective, must be multilateral. It makes no difference how tough the United States control regime is if other manufacturers of high technology are willing to make sales to the Soviets, or if they turn a blind eye to evasions of CoCom controls or their own export controls.

This case makes it clear that our priority shouldn't be adding items to the control list. The reason the Banking Committee is acting to reduce the number of items being controlled is that we already control too much to make good enforcement sense. Rather, this case points out that the first priority must be to effectively enforce, together with our allies, the controls we have.

The United States no longer has a monopoly on high technology. We have to work together with our allies on a joint control regime, one that is creditable and workable. If we are to prevent future diversions of this type, we must work jointly with our allies on a control regime that makes sense for them and for us. Without that kind of joint action, the Soviets will be able to get whatever technology they need.

This case is a powerful illustration to our allies of the cost of lax enforcement of export controls. I hope the American Government will be able to make good use of it in encouraging the allies to beef up their enforcement efforts. It is also a powerful illustration to our own Government of the perils of not taking foreign availability considerations seriously enough in making export control policy. I hope our own officials take the lesson to heart.

OPENING STATEMENT OF SENATOR WILLIAM PROXMIRE

Mr. Chairman, I have long believed that the United States and its Western allies must work together to prevent the acquisition by the Soviets of militarily critical technologies developed in the West. This is important not only to the mutual military security of the Western nations but also to the efforts each nation is making to

control government spending. If the Soviets acquire critical Western technologies and use them to enhance their military capabilities, then it means we must spend more to counter such improvements.

We have known for some time that the Soviets are making significant efforts to obtain technologies developed in the West because their own inefficient, tightly controlled, planned economy is not able to keep up with the technological breakthroughs being made in the West. In the past this Committee learned of the massive, well-managed technology acquisition program run by the Soviets. Revelations made clear that the Soviets use not only export diversions, but also spying and theft to obtain items on their military shopping list. In response to such revelations the U.S. tightened up its own export control and has worked within CoCom to persuade its allies to do the same.

Today's hearing will demonstrate how interdependent the Western nations are in this area. Actions by Japanese and Norwegian companies to obtain short-term profits will cost the American taxpayers, and taxpayers of other allied countries plenty. The Soviets have acquired a technology that all CoCom countries agreed needed to be kept out of Soviet hands and they have used it to make their massive submarine fleet even more menacing.

This case will show exactly why we and our allies need export controls and why each government must police its own companies to ensure that government adopted controls are not being evaded. It also demonstrates the need for the provision the Banking Committee added to its portion of the trade bill. That provision will enable us to ensure that foreign companies that violate CoCom export controls do not benefit from U.S. government contracts. I congratulate Senator Heinz, the author of that provision and I urge our negotiators in CoCom to use this case as a perfect example of why multilaterally agreed upon controls must be enforced. I also believe we should be approaching the Japanese and Norwegians to seek some contributions to the increased military spending we will be compelled to undertake because of this diversion.

Senator SARBANES. Dr. Bryen.

STATEMENT OF STEVE BRYEN, DEPUTY UNDERSECRETARY OF DEFENSE FOR TRADE SECURITY POLICY

Dr. BRYEN. Thank you, Mr. Chairman.

I don't have prepared remarks, but I have some thoughts that I would like to share with you today.

Mr. Chairman, we in the Defense Department as in the rest of our Government are terribly disturbed by what has happened. A number of things, in my view, have occurred and I would like to describe them to you if I can.

FAILED RESPONSIBILITY

The first is two major companies failed miserably in their responsibilities, and not only two major companies, but they are two companies that have extensive defense related business. So we are not speaking about companies that are inexperienced in the area of national security, but we are speaking about companies who are supposed to be responsible in that arena.

The failure was at all levels in those companies from what we know so far. Because we believe that the management of a company is responsible for the kind of trade it carries out, and in that respect both of these companies had extensive dealings with the Eastern bloc, including the Soviet Union.

Now the two Governments are presently conducting investigations and we don't have all the details yet as far as the performance of the companies is concerned, but we will make those details available to the committee as they become available to us.

The second failure is the failure of the licensing authorities in both countries. In the Japanese case the goods were shown to some

customs officials and masqueraded as a machine that fell beneath the CoCom guidelines. As far as we understand the situation, no effort was made to corroborate those statements. In the Norwegian case the license was issued for the goods to be sent to Japan for re-export to the Soviet Union without very careful checking.

It's not too surprising because we have been rather concerned about the level of care and the quality of license review in some of our CoCom countries largely because their staffs are so thin.

One of the steps that the committee, as Senator Garn was describing, is proposing to take in regard to our export control legislation is to allow a good amount of high technology U.S. goods to go to the CoCom countries without licenses on the theory that as good CoCom members they will be in a position to protect those goods.

I think this case does have a connection because it illustrates the weakness of some of the licensing systems, and I would be very cautious and express considerable doubt as to whether they could handle an additional large burden of licensing that might fall to them as a result of such a change in our export laws.

In the screening that we do and that Paul Freedenberg does in the Commerce Department, we in the Defense Department, are not involved in the screening of licenses to the CoCom countries. So the screening that the Commerce Department does is a vital part of the process, and the idea that we would eliminate that with the existing systems in place in the CoCom countries doing it for us is something of great concern to me.

I might say that there are three licensing officials in Norway—one, two, three, and that's it. There are other failures, too.

NECESSITY OF VIGOROUS INVESTIGATION

The investigation initially at least in Japan was a failure. We first demarched Japan in August 1986 and visited Japan in December 1986 and asked them to look into this matter and they didn't in a practical sense look into the matter, there was no investigation.

That was very unfortunate because we have made a point of stressing for the last 6 years the necessity of vigorous investigation of reported diversions, and we have done our best in this country, as you know, and some of our allies, too, have done their best to go after these diversion cases and to try and prevent them. And we have prevented quite a number, not only in Western Europe in the CoCom countries, but even outside of the CoCom countries.

So we were quite unhappy with the initial investigation. Things have changed rather radically since April, and both Governments I think now are engaged deeply, as Allan has said, in an investigation.

Unfortunately, in at least one of those cases the statute of limitations has run out because it took so long to get the investigation going, which is one of the reasons why only one individual in Norway has been charged. The laws are another failure, and that brings me right to the key issue. The laws in these countries are far from strict enough to cover the damage that can happen from one of these diversions.

The statute of limitations is 1, 2 or 3 years and sometimes it's even 6 months. The penalties are weak, and anyway they are never

used. In those circumstances, relying completely on the enforcement capabilities in some of these countries is relying on wishful thinking.

Finally I would like to say that I hope that we can see things improve, and that this case certainly will help in the case of Japan and Norway to bring about some improvement, but they are far from implementing real changes.

I think, however, that if we go ahead with the proposed legislation and dump more U.S. high technology on the CoCom countries without any audit trail and without any licensing that we are really taking a gigantic risk. There ought to be some relationship between our willingness to provide sensitive technology and the recipient country's ability to protect it.

So what I'm asking today is that there be some linkage and that we think about that linkage in our legislative efforts.

We in the Defense Department as others in the U.S. Government certainly would love to see the licensing burden and the the paperwork and all the rest associated with the process reduced. On the other hand, we don't want it reduced if it's going to mean that the Soviet Union is going to apply it to their submarines. I think that's the kind of issue at hand, and I hope that we can explore it later on in this discussion.

Thank you, Mr. Chairman.

Senator SARBANES. Mr. Freedenberg.

STATEMENT OF DR. PAUL FREEDENBERG, ASSISTANT SECRETARY OF COMMERCE FOR TRADE ADMINISTRATION

Dr. FREEDENBERG. Thank you.

I am pleased to be here this afternoon to discuss the policy implications of the sale of sophisticated machine tools and associated software to the Soviet Union by companies located in two of America's closest allies.

The question, it seems to me, is not whether this technology was damaging to U.S. national security. Clearly it was. I can think of no more significant technology transfer over the past decade with more profound deleterious effects on the U.S. strategic posture.

HOW TO PREVENT REOCCURRENCE

The question before the committee now is how can we prevent the reoccurrence of such damaging technology transfer in the future, because it must be emphasized that extremely high levels of technology are available outside the United States. The widespread availability of sophisticated equipment from other CoCom countries merely underscores the futility of strict unilateral U.S. efforts.

We must insist that all CoCom members approach export controls with the same energy and dedication as the United States.

For the past 7 years this administration has been aggressively pursuing the upgrading of both our domestic and our multilateral export control regime. At home we have more than quadrupled the number of personnel involved in export control, substantially increased funding for export control programs, automated routine aspects of the licensing process, heightened the awareness of the exporting community to the need for protecting sensitive equipment

and technical data, reorganized the bureaucracy to better deal with export control issues, raised the technical expertise of our licensing personnel, strengthened our distribution and individual validated license procedures and generally made the system more effective, efficient, and responsive.

Abroad we have upgraded both the facilities and the status of CoCom and strengthened bilateral and multilateral cooperation and encouraged countries outside the western alliance to develop CoCom-like controls.

I might add that in 1983 when I was with the committee I wrote a report on my trip to CoCom and I said that it seemed like a set for "The Spy Who Came In From The Cold." It was so austere and underequipped, and that has changed, although not perhaps as much as we would like it to.

There can be no doubt that our commitment to a rational and effective export control regime is total and unwaivering. However, it's clear that this commitment to fully administer and enforce multilateral export controls is not consistently shared by our CoCom allies.

Consequently, the administration has been pursuing harmonization and improvement of licensing and enforcement at CoCom over the past 5 years. We have been energetically discussing with our CoCom allies the need for all members to pursue the following.

First, high-quality license review, including detailed technical analysis of equipment proposed for export and end-user checks. This would require, in some cases, additional monetary and personnel resources and we are pressing our CoCom allies to commit those necessary resources.

Again, that might be an advantage of this latest case because when you have only two or three or four, or a dozen, people in that system, you're going to have to take the representations of the company on faith in many cases.

I think, parenthetically, it also explains why it takes longer to get a license in the United States because we do check out end-users and we do the sorts of checks on intelligence that perhaps are not always carried out abroad. So when we talk about how fast you can get a license, you have to reflect on that aspect of it as well.

Second, the publication of control lists and the education of the export public to the need for export controls is important, and coordination of licensing and enforcement efforts, which is a major objective at the present time, and adoption of uniform interpretations of CoCom controls. In this way licensing authorities would be able to plug gaps in the controls created by forum shopping.

Again this is a very important thing not only for competitiveness reasons, because we have seen in many cases our allies taking a much more liberal interpretation of precisely the same parameters that we take a narrow interpretation of, but also because it obviously can have a very significant impact on national security.

CRIMINAL PROSECUTION

We are also trying to upgrade CoCom commitment to the proposition that export control offenses are serious and that national

laws ought to reflect the seriousness of the crime. Willful violations of export control laws should be subject to criminal prosecution.

Again we have a number of countries in which there simply has never been a criminal prosecution of an export control violation. If that's the case, the risk is very low. Even if it's on the books and the burden of proof is so high that the law is not like to be used, you can see the very low deterrent effect of that law.

The threat of criminal prosecution can act as a powerful deterrent to unscrupulous business practices. If all CoCom countries agreed to treat willful export violations as serious criminal offenses the renegotiation of extradition treaties to include export control offenses might also be facilitated.

We also are looking for implementation of improved channels for sharing information on violations of multilateral export controls. Again, we not only want to share that information, but we want to have a sense that it's being used by our allies which we have some doubts about at times.

We are looking for the adoption of a standard destination control statement that would be required on all shipping documents to accompany strategic commodities. Such a statement would identify the commodities that are controlled to certain specified destinations. We think this would be a powerful tool to assist customs inspectors to track down the movement of controlled commodities, a very simple request, but still not one that we have had great response from our allies about.

We have improvement in enforcement cooperation at a working level. Enforcement officers from many countries are discussing techniques to prevent the diversion of strategic goods, and the roles and responsibilities of enforcement agencies in cooperation among national agencies and departments.

As you can see, the entire administration is strongly committed to improving multilateral export control licensing and enforcement. We have led by example at considerable expense and effort, and we can expect no less from other CoCom members.

In conclusion, the Toshiba diversion illustrates that there must be a commitment by all of CoCom to make multilateral controls uniformly effective. This case has shocked the Government of Japan into recognizing flaws in its current licensing and enforcement system, and it has had the same effect, obviously, from the recent announcement on the Government of Norway.

It also serves as a lesson to our CoCom allies that much needs to be done in order to enhance CoCom's effectiveness.

We feel confident that many of our initiatives will be adopted by other governments and thereby lead to more effective measures to deter export control violations that adversely affect our collective security.

We intend to vigorously make our case for strengthened multilateral enforcement at the next CoCom high-level meeting this summer.

Thank you.

[The complete prepared statement of Dr. Paul Freedenberg follows:]

TESTIMONY BY
DR. PAUL FREEDENBERG
ASSISTANT SECRETARY OF COMMERCE
BEFORE THE
SENATE COMMITTEE ON BANKING, HOUSING,
AND URBAN AFFAIRS

JUNE 17, 1987

I AM PLEASED TO BE HERE THIS AFTERNOON TO DISCUSS THE POLICY IMPLICATIONS OF THE SALE OF A SOPHISTICATED MACHINE TOOL AND ASSOCIATED SOFTWARE TO THE SOVIET UNION BY COMPANIES LOCATED IN TWO OF AMERICA'S CLOSEST ALLIES.

THE QUESTION, IT SEEMS TO ME, IS NOT WHETHER THIS TECHNOLOGY WAS DAMAGING TO U.S. NATIONAL SECURITY. CLEARLY, IT WAS. I CAN THINK OF NO MORE SIGNIFICANT TECHNOLOGY TRANSFER OVER THE PAST DECADE, WITH MORE PROFOUND DELETERIOUS EFFECTS ON THE U.S. STRATEGIC POSTURE.

THE QUESTION BEFORE THE COMMITTEE IS HOW CAN WE PREVENT THE RECURRENCE OF SUCH DAMAGING TECHNOLOGY TRANSFER IN THE FUTURE; BECAUSE IT MUST BE EMPHASIZED THAT EXTREMELY HIGH LEVELS OF TECHNOLOGY ARE AVAILABLE IN OTHER COUNTRIES.

THE WIDESPREAD AVAILABILITY OF SOPHISTICATED EQUIPMENT FROM OTHER COCOM COUNTRIES MERELY UNDERSCORES THE FUTILITY OF STRICT UNILATERAL U.S. EFFORTS. WE MUST INSIST THAT ALL COCOM MEMBERS APPROACH EXPORT CONTROLS WITH THE SAME ENERGY AND DEDICATION AS THE UNITED STATES.

FOR THE PAST SEVEN YEARS, THIS ADMINISTRATION HAS AGGRESSIVELY PURSUED THE UPGRADE OF BOTH OUR DOMESTIC AND MULTILATERAL EXPORT CONTROL REGIME. AT HOME, WE HAVE MORE THAN QUADRUPLED THE NUMBER OF PERSONNEL INVOLVED IN EXPORT CONTROL, SUBSTANTIALLY INCREASED FUNDING FOR EXPORT CONTROL PROGRAMS, AUTOMATED ROUTINE ASPECTS OF THE LICENSE PROCESS, HEIGHTENED THE AWARENESS OF THE EXPORTING COMMUNITY TO THE NEED FOR PROTECTING SENSITIVE EQUIPMENT AND TECHNICAL DATA, REORGANIZED THE BUREAUCRACY TO BETTER DEAL WITH EXPORT CONTROL ISSUES, RAISED THE TECHNICAL EXPERTISE OF OUR LICENSING PERSONNEL, STRENGTHENED OUR DISTRIBUTION AND INDIVIDUAL VALIDATED LICENSE PROCEDURES, AND GENERALLY MADE THE SYSTEM MORE EFFECTIVE, EFFICIENT AND RESPONSIVE.

ABROAD, WE HAVE UPGRADED BOTH THE FACILITIES AND STATUS OF COCOM, STRENGTHENED BILATERAL AND MULTILATERAL COOPERATION, AND ENCOURAGED COUNTRIES OUTSIDE THE WESTERN ALLIANCE TO DEVELOP "COCOM-LIKE" CONTROLS. THERE CAN BE NO DOUBT THAT OUR COMMITMENT TO A RATIONAL AND EFFECTIVE EXPORT CONTROL REGIME IS TOTAL AND UNWAVERING.

HOWEVER, IT IS CLEAR THAT THIS COMMITMENT TO FULLY ADMINISTER AND ENFORCE MULTILATERAL EXPORT CONTROLS IS NOT CONSISTENTLY SHARED BY OUR COCOM ALLIES. CONSEQUENTLY, THE ADMINISTRATION HAS BEEN PURSUING HARMONIZATION AND IMPROVEMENT OF LICENSING AND ENFORCEMENT AT COCOM OVER THE PAST FIVE YEARS.

WE HAVE BEEN ENERGETICALLY DISCUSSING WITH OUR COCOM ALLIES THE NEED FOR ALL MEMBERS TO PURSUE THE FOLLOWING:

1. HIGH QUALITY LICENSE REVIEW, INCLUDING DETAILED TECHNICAL ANALYSIS OF EQUIPMENT PROPOSED FOR EXPORT, AND END USER CHECKS THIS WILL REQUIRE, IN SOME CASES, ADDITIONAL MONETARY AND PERSONNEL RESOURCES, AND WE ARE PRESSING OUR COCOM ALLIES TO COMMIT THOSE NECESSARY RESOURCES.

2. PUBLICATION OF CONTROL LISTS AND EDUCATION OF THE EXPORTING PUBLIC TO THE NEED FOR EXPORT CONTROLS.

3. COORDINATION OF LICENSING AND ENFORCEMENT EFFORTS.

4. ADOPTION OF UNIFORM INTERPRETATIONS OF COCOM CONTROLS. IN THIS WAY, LICENSING AUTHORITIES WOULD BE ABLE TO PLUG GAPS IN THE CONTROLS CREATED BY "FORUM SHOPPING."

5. COMMITMENT TO THE PROPOSITION THAT EXPORT CONTROL OFFENSES ARE SERIOUS. NATIONAL LAWS OUGHT TO REFLECT THE SERIOUSNESS OF THE CRIME. WILLFUL VIOLATIONS OF EXPORT CONTROL LAWS SHOULD BE SUBJECT TO CRIMINAL PROSECUTION.

   THE THREAT OF CRIMINAL PROSECUTION CAN ACT AS A POWERFUL DETERRENT TO UNSCRUPULOUS BUSINESS PRACTICES. IF ALL COCOM COUNTRIES AGREED TO TREAT WILLFUL EXPORT CONTROL VIOLATIONS AS SERIOUS CRIMINAL OFFENSES, THE RENEGOTIATION OF EXTRADITION TREATIES TO INCLUDE EXPORT CONTROL OFFENSES MIGHT ALSO BE FACILITATED.

6. IMPLEMENTATION OF IMPROVED CHANNELS FOR SHARING INFORMATION ON VIOLATIONS OF MULTILATERAL EXPORT CONTROLS.

7. ADOPTION OF A STANDARD DESTINATION CONTROL STATEMENT THAT WOULD BE REQUIRED ON ALL SHIPPING DOCUMENTS ACCOMPANYING STRATEGIC COMMODITIES. SUCH A STATEMENT IDENTIFIES COMMODITIES THAT ARE CONTROLLED TO CERTAIN SPECIFIED DESTINATIONS. WE BELIEVE THIS WOULD BE A POWERFUL TOOL TO ASSIST CUSTOMS INSPECTORS TO TRACK THE MOVEMENT OF CONTROLLED COMMODITIES.

8. IMPROVEMENT IN ENFORCEMENT COOPERATION ON A WORKING LEVEL. ENFORCEMENT OFFICERS FROM MANY COUNTRIES ARE DISCUSSING (1) TECHNIQUES TO PREVENT THE DIVERSION OF STRATEGIC GOODS, (2) THE ROLES AND RESPONSIBILITIES OF ENFORCEMENT AGENCIES, AND (3) COOPERATION AMONG NATIONAL AGENCIES AND DEPARTMENTS.

AS YOU CAN SEE, COMMERCE IS STRONGLY COMMITTED TO IMPROVING MULTILATERAL EXPORT CONTROL LICENSING AND ENFORCEMENT. WE HAVE LED BY EXAMPLE AT CONSIDERABLE EXPENSE AND EFFORT. WE CAN EXPECT NO LESS FROM OTHER COCOM MEMBERS.

IN CONCLUSION, THE TOSHIBA DIVERSION ILLUSTRATES THAT THERE MUST BE A COMMITMENT BY ALL OF COCOM TO MAKE MULTILATERAL CONTROLS UNIFORMLY EFFECTIVE. THIS CASE HAS SHOCKED THE GOVERNMENT OF JAPAN INTO RECOGNIZING FLAWS IN THEIR CURRENT LICENSING AND ENFORCEMENT SYSTEM. IT ALSO SERVES AS A LESSON TO OUR COCOM ALLIES THAT MUCH STILL NEEDS TO BE DONE TO ENHANCE COCOM'S EFFECTIVENESS.

WE FEEL CONFIDENT THAT MANY OF OUR INITIATIVES WILL BE ADOPTED BY OTHER GOVERNMENTS, THEREBY LEADING TO MORE EFFECTIVE MEASURES TO DETER EXPORT CONTROL VIOLATIONS THAT ADVERSELY AFFECT OUR COLLECTIVE SECURITY. WE INTEND TO VIGOROUSLY MAKE OUR CASE FOR STRENGTHENED MULTILATERAL ENFORCEMENT AT THE NEXT COCOM HIGH LEVEL MEETING THIS SUMMER.

Senator SARBANES. Thank you very much, gentlemen, for helpful statements. Let me start off the questioning.

First of all, clearly what was done was a violation of the export control regime; is that correct?

Dr. FREEDENBERG. Yes.

Senator SARBANES. I don't quite understand the point which Steve Bryen put. I don't understand how the proposed changes that the committee has reported out in the export regime would make what occurred in this instance any less a violation of that regime.

Dr. BRYEN. No, I don't think that is the point I made. The point I made——

Senator SARBANES. Before you slide off to the other point, I want to be clear on this point. Is it not the case that the changes which the committee has reported out to make in the export regime would in fact make no change as it applies to the facts of this case?

Dr. FREEDENBERG. It's precisely nine axis machine tools which, under any imagined regime of CoCom, are proscribed to the East. We have a two-axis limit, with an administrative exception up to three axis, but nine is a highly sophisticated machine.

Senator SARBANES. This is at the top level of the technology and was covered under the existing law where the violation took place and would be covered under the law as it's proposed to be amended; is that correct?

Dr. FREEDENBERG. It would be covered in the United States and it would be covered under CoCom in any CoCom country.

Senator SARBANES. What sanctions could we take against Toshiba if we chose to do so or against the Norwegian company?

IMPORT SANCTIONS

Dr. FREEDENBERG. There is an amendment in the 1985 act which allows for import sanctions. There are two cases. One is import sanctions if there is a connection to U.S. technology. To the best of our knowledge, there is no connection to U.S. technology. This is section 233 of the Export Administration Amendments Act of 1986. But there is a section 233B which says that any person or company that violates the regulation under a multilateral agreement would be subject to import sanction in the United States, but only after negotiations and only after a majority of the parties to a multilateral agreement, that is CoCom, have expressed concurrence in the import controls or have abstained from stating a position with regard to the proposed controls. So you would have to get a majority of CoCom to agree to that, which is I would say is an unlikely event.

Senator SARBANES. So under the existing law, for instance, the Defense Department could not in effect bar all contracts with Toshiba; is that correct?

Dr. FREEDENBERG. I think the Defense Department might speak to that.

Dr. BRYEN. Well, I'm not sure that that's correct. The Defense Department can bar contracts with companies if their behavior is regarded in some way as below normally acceptable ethical standards and they can take a procurement action based on those kinds of judgments.

So there is a possibility. Senator Sarbanes, I'm not an expert on the procurement laws, but my understanding is, and we can give you a precise statement on it, but there is a possibility to debar.

Senator SARBANES. Well, one of the things that's in the legislation that the committee has reported that's awaiting floor action is a new provision of sanctions for export violations, and let me just read it to you because it seems to me that your response is some sort of very general authority and this is very specific.

It says:

> Any non-United States person who violates any regulation issued by a country to control exports for national security purposes pursuant to the agreement of the group known as the coordinating committee * * *.

And I take it that that's what occurred in this instance; is that correct?

Dr. BRYEN. Yes.

Senator SARBANES. It goes on to say:

> * * * may be debarred from contracting with any department, agency or instrumentality of the United States for not to exceed 5 years.

So this is a specific authority heretofore lacking in law.

Dr. FREEDENBERG. I think it's a specific statement of what he thought was discretionary at this point.

Senator SARBANES. Yes, but which would give you a debarment power in this instance, for example; is that correct?

Dr. FREEDENBERG. That would be my interpretation, yes.

Senator SARBANES. Well, as I said in my opening statement, I think this is an extraordinarily serious matter, but I think in seeking how to deal with it we have to analyze very carefully the statutory arrangements under which it occurred and the changes that would be directed to deal with it.

I mean this occurred under the old statutory regime. As I understand it, the changes the committee has sought to make would not have permitted this under a new statutory regime, and in fact this section for sanctions provides an additional remedy that may heretofore may not have been available in order to deal with it.

Is there in fact a consideration underway in the administration in terms of denying access to either one or both of these companies in the American market?

Mr. WENDT. Not to my knowledge, Mr. Chairman. As I said in my statement, this particular incident, deplorable and regrettable though it is, did not involve any U.S. goods, any U.S. technology or any U.S. persons, and we continue to believe that the best way to deal with this kind of a situation is to work to strengthen the export control system in CoCom.

We have to obtain the cooperation of other countries in CoCom in having effective export control regimes. I think we are working hard——

Senator SARBANES. Why are they mutually exclusive and why can't you work to tighten the CoCom regime and at the same time have as an additional sanction the knowledge that if a company violates the CoCom regulations, particularly in an instance as significant as this one, that that company is going to lose important American business.

They apparently traded off $17 million worth of sales to the Soviet Union which have imposed very significant additional costs on our defense effort and they may now have some punishment of some individuals, but how is the company going to suffer?

Turn to page 3 of your statement, Mr. Wendt.

Japan has taken the following steps:

Prohibited Toshiba Machine from conducting any commerce with the Soviet bloc for 1 year beginning May 22, 1987.

How much commerce do they conduct with the Soviet Union in a year?

Mr. WENDT. I would have to obtain that information for the record, but my understanding is that this prohibition even for 1 year will eliminate any profits for the company for that entire period. It will put them in the red. Their commerce is sufficient so that that's an effective measure that has been imposed against the Toshiba Co.

The following information was subsequently submitted for the record:

Toshiba Machine made total exports of $36,000,000 to the "Communist bloc" in 1986, the last period for which data is available. There was no separate break-out of exports to the USSR itself.

Mr. Chairman, could I clarify the point I made just a moment ago. I was not taking a position one way or another on the provision of the legislation that you mentioned. I was only saying that we do not advocate in this particular instance unilateral sanctions because we don't think at this juncture they would be effective. I'm informed that the particular provision you mentioned is not in the committee print of the legislation that we received, and therefore so far as I know, there is no U.S. Government administration position on that particular provision. That was the point of my remarks.

I'm not saying we are for it or against it. I was only making the point that we don't think in this instance unilateral sanctions by the U.S. would actually help us achieve the objective that I think we all share, namely, to prevent recurrence of this kind of situation.

Senator SARBANES. Well, when you say in this instance, how do you mean to limit the point?

Mr. WENDT. Well, just that we are talking here about an incident that, as I said, did not involve any U.S. goods or U.S. technology or U.S. persons. We, therefore, have to persuade other countries in CoCom of the importance of effective controls.

Senator SARBANES. Well, why wouldn't part of an effective persuasion or enforcement be that if companies violate the CoCom regulations they are going to suffer not only the sanctions which their own particular country may impose for doing that, but loss of access to the American market. Why isn't that a reasonable sanction?

Mr. WENDT. Mr. Chairman, I'm not ruling out an approach of that sort in legislation. I'm only saying that I haven't seen it before and we don't have a position on it. And I am adding that in this particular case I don't think a unilateral effort on the part of the United States in the form of punitive sanctions would be effective.

I'm not saying that that kind of an approach for evermore would not be advisable.

Senator SARBANES. Well, it comes after the fact and the damage has already occurred. So in that sense it's not going to be effective as an deterrent in this instance. The question is whether such sanctions would serve as an effective deterrent to prevent or preclude other instances from occurring.

Mr. WENDT. I think we would be happy to examine any such provision. I'm just not able right now to give a clear administration position on it because we haven't seen it before.

Dr. BRYEN. Mr. Chairman, just to add to that, whatever it was, I would just add this thought, that that amendment will cover companies who are selling the goods to the United States, but it's not going to do anything for the ones that are not selling goods to the United States.

One of these companies involved in this transaction is a trading company, Wako Koeki, which as far as I know doesn't sell anything to the United States. So they would not be touched by that proposal.

Senator SARBANES. That's right, and there you are dependent on the effectiveness of CoCom in restricting the companies, are you not?

Dr. BRYEN. There you are depending on national legislation, and what we've been seeking, and not with great success I'm afraid, is to try to get the CoCom countries to strengthen their laws and to vigorously take on diverters so that they know there are penalties, real penalties in such cases.

Senator SARBANES. Senator Heinz. My time is up.

Senator HEINZ. Senator Garn was here before I was.

Senator SARBANES. Senator Garn.

Senator GARN. Thank you, Mr. Chairman.

Let me follow up on this issue the Chairman has been talking about.

A SLAP ON THE WRIST

Mr. Wendt, do you really feel that a 1-year slap on the wrist for a company that is as big as Toshiba inhibits them in any way whatsoever? I find it difficult to accept your statement that removing them from trade with the Soviet Union for 1 year with all the TV sets and all the consumer goods they sell in this country would wipe out their profits. Either I misunderstood you or you misstated.

Dr. FREEDENBERG. I think we were talking about Toshiba Machine Tool and not Toshiba. They are all giant multinational and multiproduct companies. That's what they were talking about.

Senator GARN. All right. I wanted to clarify that. But there is talk in the House, with Congressman Roth and so on. Let me paint the picture.

I know a little bit about submarines. In a former life when I was young and had hair I used to be an antisubmarine pilot. I spent 4 years of my life trying to find submarines, and believe me Soviet submarines were easier to find than our own because of the noise.

Now I hope no one misunderstands what has been meant by Toshiba and Kongsberg here. When we are talking about the strate-

gic defense of this country, one of the most important legs of the triad is our antisubmarine defense and our ability to have our submarines threaten the Soviet Union as a deterrent.

When you quiet down those submarines, and when I stated that in my term in the Senate this had been the most serious diversion, that is probably an understatement in terms of strategic defense.

We have the John Walker case, and he gets life imprisonment, which he should. I would have preferred the death penalty, but nevertheless he got life imprisonment.

And here we are saying that the Japanese Government is really tough on them and they are going to take their profits away from their machine tool business for 1 year that will cost this country billions.

I'm sure you can't supply it today, Dr. Bryen, but I would like an estimate when you've got it, of what it's going to cost this country when we've got a difficult situation in the budget, constant pressure to cut defense and not even having broad real terms, and I want to know how many billions of dollars it's going to cost us and I want an answer from this administration if they are going to ask the Japanese and the Norwegians to pay part of that bill.

These are two countries that do not do their adequate share of their defense. We have provided a defense umbrella for both countries, and as a result of this diversion we are going to have to spend billions of dollars of additional money that is very short for defense purposes.

And I'm a little bit tired of Japan sticking around their 1 percent of GNP for defense saying they can't help us in the Gulf when more of their oil comes out of there than ours because of these prohibitions. They can't build up their defense forces and they can't help themselves.

And then they do this and they slap them. I mean it is an insult, an absolute insult to me from the Japanese Government in this country to say that they are going to slap them for 1 year.

I think Mr. Roth makes a very good point. They sell one hell of a lot of TV's over here, and I think we ought to consider legislation, which I recognize we can argue the intricacies of what DOD can do as far as debarring or suspending under the Export Control Act. I'm talking about new legislation that sends a signal to CoCom because we all know, and I'm not going to get back into all the time Paul and I and Senator Heinz and others talked about strengthening CoCom, which is about as weak a sister as you would ever want to find and our allies' unwillingness to cooperate.

I think this is an example of where we ought to pass a law that bars all Toshiba products from the United States. Now that might get their attention, but not a year's slap on the wrist for their Machine Tool, and I would suggest that might send a message to some of the other CoCom countries, because CoCom is about as toothless a tiger as ever existed with their little office over in Paris and what they do. They are more interested in profits than they are the defense of their countries. There has been no enforcement. You've all testified today that there has been no criminal prosecution.

And the chairman is right. Even though I don't like some of the things we put in the law, this case is a violation under any law

that we've got and we are not doing anything about it. I don't care what kind of a law we write and whether we agree or disagree on tough or less tough provisions. Unless there is some enforcement and some willingness, we are going to continue to injure the defense of this country and cost billions of dollars more.

Dr. FREEDENBERG. If I could add one thing. The original provision, the original amendment that you and Senator Heinz had would have allowed unilateral sanctions without CoCom agreement. It was later bargained away——

Senator HEINZ. You're talking about the one 2 years ago?

Dr. FREEDENBERG. Yes, the one two years ago. It was later softened we might say.

Senator HEINZ. In Senate Finance.

Dr. FREEDENBERG. In the Senate Finance Committee because of trade considerations. It was there and there was consensus on this committee to have that originally, but it was put in a situation where you really would not be able to use it since you would have to have a CoCom agreement to impose the sanction.

Senator GARN. Oh, I remember the debate very well when we were trying to do that. But what I'm suggesting now is rather than fight the export control administration, that we consider punishing a particular company in a very serious way, and start suggesting that if we are not willing to do that the American people quit buying Toshiba products.

They have really injured the security of this country in a very dramatic way, and I don't know how much money they sold out for. What was the profit? Do you know what the profit was, Paul?

Dr. FREEDENBERG. About $17 million or something like that, a very small amount.

Senator GARN. $17 million, almost as bad as the $3,000 for the watch officer at the CIA, and the Walkers got a few hundred thousand bucks.

Dr. BRYEN. That wasn't the profit. That was the transaction.

Dr. FREEDENBERG. That's the transaction. It was less profit, yes.

Dr. BRYEN. Much less profit.

Dr. FREEDENBERG. There is also an area besides enforcement that we need much more emphasis on: licensing, because from all we know the licensing of this was done as a sort of overnight rubber stamp, and that's an absurd situation.

Senator GARN. Paul, I understand all that. My point in this case is to start making an example out of Toshiba and punish them. I'm not only disturbed with what I consider nothing on the part of the Japanese or the Norwegians. It's insignificant what they have done to punish and to send signals to other people while we try and do this. And as far as I'm aware, this administration has had no response.

DOD, under whatever authority you have you have not debarred or suspended, or at least that is my information. The DOD has done nothing to Toshiba.

Dr. BRYEN. Well, we have deferred all new contracts with both companies.

Senator SARBANES. You've done what?

Dr. BRYEN. Deferred all new contracts. There were quite a few pending, and we're talking a lot more than $23 million. We de-

ferred all new contracts with both companies until this matter is resolved.

Senator GARN. Mr. Wendt, does the State Department—I mean in my 12 years I very rarely expect a specific statement from the State Department, but is the State Department going to have a position, a recommendation on this, or are we just going to glide merrily along with knowns down at the State Department who never want to take a firm position on anything?

STATE DEPARTMENT'S POSITION

Mr. WENDT. Senator, I think that the statement that I submitted for the record was a clear statement. So I would have to take exception to your characterization of the State Department's position in this matter.

Senator GARN. Well, what is the State Department recommending that we do about it? I'm not talking about after years of working on the Export Administration Act. I'm tired of legal beagles and playing with words and so on. I want to know if they are going to make a recommendation to do something to Toshiba specifically outside the Export Administration Act and outside normally diplomatic channels? Is there going to be some recommendations that we punish Toshiba and they sell their TV sets in the Soviet Union? See how many they can sell over there.

Mr. WENDT. Senator, let me clarify a few points I made. I'm not trying to say that the elimination of profits for Toshiba Machine for 2 years I'm informed rather than 1 year is the be all and end all answer to this case.

I outlined a number of measures the Japanese have taken. They have indicted nine people and their investigation is going on. I understand the statute of limitations that was in effect legally was suspended with the Tokyo district court's decision to prosecute the two Toshiba Machine officials, and that's the suspension that would apply to all those that may be considered accomplices to the illegal exports of the machine tool parts that we were talking about. And I mentioned a number of other measures that the Japanese Government has taken.

I think it's fair to say, and I believe my colleagues would agree with me, that those measures can't be dismissed as an insignificant or trivial action in the Japanese context where the two top officials of the company have resigned and, as I said, nine indictments have been handed out. It's not a trivial reaction and their investigation continues.

If there is a provision in the legislation that we can examine, as I pointed out in my earlier statement, we would be happy to do so. We want nothing more than to try to correct this situation. We have worked hard with the Japanese and the Norwegian Governments to try to bring about a strong reaction and we are going to continue to do everything we possibly can to see that there is no recurrence of this kind of a situation. We take it very, very seriously.

Senator GARN. My time is up, but I think it's time that an example be made of Toshiba to send a signal to other companies because how many times do we come back about diversions. I'm getting

tired of holding hearings about diversions and always hearing through two administrations I've served with, we're doing all to stop them. And unless somebody really decides to get tough with these countries and these companies, and I'm one who is not in favor of most of this trade bill. I'm not in favor of the Gebhardt amendment, and I don't like protective legislation, but I am talking about specific retribution.

Let me put it as bluntly as I can. We have a company who has endangered the security of their own country as well as ours and our Western allies, and I don't care how many indictments they have, it isn't sufficient and we ought to start hitting them in the pocket book and really hurt Toshiba and let the word go out that we are not going to continue to spend defense dollars for these diversionary purposes while our allies, so-called allies, Japan and Western Europe, continue to subsidize exports to this country, reduce employment in this country, hurt our profit picture and all of the things that go with that trade deficit and continue to handle it with tokenism.

I think that's what we are doing and I would suggest that there is blame enough for everybody to go around, and this administration needs to be a lot tougher and not come up with the usual yes, we're working on it, because I don't want to sit here.

If you think I'm mad this time wait until the next diversion comes along and you'll really see my anger over what has been done.

My time is up.

Thank you, Mr. Chairman.

Senator SHELBY. Mr. Chairman.

Senator SARBANES. Senator Shelby.

Senator SHELBY. Mr. Chairman, I have an opening statement I would like to put in the record, and then I have some questions.

Senator SARBANES. Without objection, the statement will be included in the record.

STATEMENT OF SENATOR RICHARD SHELBY

Senator SHELBY. Mr. Chairman, as a new member of this subcommittee, I want to commend the chairman for his leadership in calling this hearing on this critical matter.

Being also a member of the Senate Armed Services Committee, I am shocked by the egregious actions by the Japanese company, Toshiba, and the Norwegian company, Kongsberg.

The sale by these companies of submarine propeller quieting technology to the Soviet Union has caused irreparable harm to our national security.

I am appalled that these Western companies would compromise the military superiority and security of the West for the sake of just one more sale.

This situation raises three critical questions.

First, what damage has been caused to our national security?

Second, why did our intelligence operations not detect this activity?

Third, what can be done to prevent further occurrences?

I look forward to hearing our witnesses' insights into these activities.

Senator SARBANES. Please proceed.

Senator SHELBY. Mr. Chairman, in addition to being a member of the Banking Committee, I'm a member of the Armed Services Committee. This is rather shocking to me, but it's not something that's not expected considering what we've done in the past and so forth.

The Senator from Utah talked about the Walker case, which is very important and did irreparable damage to national security. We all know this. And now we've got Toshiba doing something here. They are getting a free ride. The Japanese are getting a free ride, not only in the Persian Gulf right now, but they are getting a free ride period and they are hiding behind the deal in their constitution that says the only thing we can do is something for defensive purposes.

Well, I think it's time that we did something for defensive purposes, not only on ordinary trade, but strategic trade.

One thing that we have had in this country, and you three gentlemen know this, we have had an edge in a lot of areas of technology. But the Soviet Union either is going to steal it or they are going to buy it, and it looks like to me they can buy it cheap and they can undermine a lot of our technological advantage that we've had, not only in the area of submarines, but others by dealing with some of our trading partners, people that we have trusted and people that we have dealt with, but give us nothing in return.

We should send out the word here, and you could start, that this is a two-way street.

I know Secretary Weinberger, and I don't agree with him on everything, but he has raised this question before on the transfer of technology and he deserves credit there.

I know the Secretary of Commerce and others in the Department of Commerce had advocated, as a lot of people in the business world, that we ought to sell anything we can, and that's what the Japanese are doing and that's what a lot of Americans would do.

I raise this here for the reason that we're going to give it all away and that we are not going to have a lot to trade when all of our national security has been transferred cheaply and at a tremendous disadvantage.

I did want to follow up on this, Dr. Freedenberg. You mention, and I believe it's on the second page, and I'll use your words. It says, "We have been energetically discussing with our CoCom allies the need for all members to pursue the following things."

One, I doubt you've been doing anything energetically like this because I believe if you did you could bring your trading partners around. The Senator from Utah mentioned barring Toshiba and some others, and I think that's what it's going to take. That just like the administration, President Reagan slapping the Japanese on the wrist and then helping remove the marks, if any, that were there on the trade thing.

I think you've got to put some teeth in it. They don't believe us, they don't trust us in doing anything as far as sanctions, and you know and I know it. And you can talk and you can talk, and we've talked with the Soviet Union for years and we've talked with our allies for years, but nothing happens.

We've got the largest GNP in the world and they want to trade with us. We can set the standards. They need us worse than we need them, and we should certainly set the standard where national security is involved and you certainly haven't done it.

I would like to know what are you really going to do other than come to a hearing and talk about, you know, you're going to do something energetically, and what could you do and what would you propose other than what you're saying here?

Dr. FREEDENBERG. The agenda which we laid out is essentially our major discussion for this year. It's a question about whether as bad as CoCom is, and as inadequate as the responses that we get from our allies is, what you do as an alternative to it, and whether you can interest your allies in strengthening their own security by making it clear to them that this is not just something that is in the U.S. interest.

I think Senator Garn when he was talking about his time as an antisubmarine pilot off the coast of Japan, would tell you that its not irrelevant that the submarines that will be off there will now be quieter.

Essentially, what you are talking about is making it clear to them that it's in their interest; and making it clear that in order to continue the sort of trade and trading regime that we have, and making sure that things don't break down, that we have to get a response out of them.

Now whether you use sanctions or whether you use some inducements, why not——

USE OF SANCTIONS

Senator SHELBY. He mentioned and why not use sanctions, and why don't you all propose sanctions and I mean of the first magnitude? Why not? There will be more televisions on the market here, either American or somewhere, and nobody is going to suffer and the consumer isn't going to suffer.

Dr. FREEDENBERG. Toshiba has not been on the agenda at CoCom. So that's not the question.

Senator SHELBY. And by the agenda you mentioned, is this just going to be a protracted meeting after meeting? I mean why don't you get to the point on these things?

Dr. FREEDENBERG. We do get to the point. The question is getting an agreement.

Senator SHELBY. When and how?

Dr. FREEDENBERG. I mean the question is how do you get an agreement and not how you get to the point.

Senator SHELBY. I think you get an agreement when you impose these sanctions.

Dr. FREEDENBERG. Sanctions within CoCom are we talking about?

Senator SHELBY. No. We're talking about the United States, just barring Toshiba from any trade, and you could do it unilaterally. You could do it just like that if you had the courage to do it.

Senator GARN. If the Senator would yield.

Senator SHELBY. I'll yield.

Senator GARN. I'll give you an opportunity on the floor to vote for an amendment. I'll have one crafted.

Senator SHELBY. Not only would I vote for it, I would hope to cosponsor it with you.

Senator GARN. Because if we wait for CoCom and the administration both of us will be gone from here. [Laughter.]

Senator SHELBY. I believe you and I think it's the same old stuff that you've seen in the Senate for years and I've seen in the House, to come with excuses and we're going to enter into discussions and hoping that this is going to go away and they are not going to have to come up here and explain it to the committee or to the American people.

I want to know what are you doing as far as in the Commerce Department other than where you're hands have been tied by the Secretary of Defense on the transfer of technology, and the Commerce Department has fought the Secretary of Defense tooth and nail in a lot of areas here.

Dr. FREEDENBERG. I think the question is the diversions we are talking about here, the dangers of diversions are from our allies. If you're talking about efficiencies or improvements in catching diverters and ensuring that from an intelligence——

Senator SHELBY. I'm talking about both, our allies and the United States.

Dr. FREEDENBERG. Well, we don't run their programs. We can only advise them on how to make their programs better.

Senator SHELBY. Well, obviously they aren't listening to you though, are they?

Dr. FREEDENBERG. That's a problem that we have, but that doesn't mean that we shouldn't give them advice or try to get them to improve their system. That's been a major objective, as I said. We've helped set up export control systems in a number of countries outside of CoCom and, indeed, interestingly some of those systems are now better than CoCom systems themselves. We've gotten cooperation from third countries around the world and we've gotten agreements, or are close to agreements, with most of the high technology countries outside of CoCom.

That's been a major objective and we've given them advice on how to set up their systems and in some cases they have been able to catch diverters. They have set up systems that, as I say, have more resources and more attention to it than the CoCom countries themselves. And our own system has not had major diversions that have occurred. We have improved the system and we have better intelligence.

As I said, we have quadrupled the resources to it and upgraded the personnel. It's not like we've been sitting around doing nothing in this area, and we have not been recommending, nor have we cut the control list to the East.

What we've been talking about in terms of reforms has been entirely within the Western World. Any control cuts to the East would be within a multilateral context. That is, everybody would have to agree with it, and it's not something that is high on the agenda or that is really being discussed in any significant way by the administration or by the Congress. I think all the proposals are West/West proposals and not West/East.

Senator SHELBY. Well, I'll be watching what you do and others will, too, and I'm sure there won't be a lot accomplished. I hope I'm pleasantly surprised.

Thank you, Mr. Chairman.

Senator SARBANES. Senator Heinz.

Senator HEINZ. Mr. Chairman, thank you very much.

First, I would like to state for the record the chronology of events in the Toshiba-Kongsberg propeller milling technology diversion case is a sorry record of slough and inaction on the part of people we like to think of as friends and allies.

ACTION THAT SENDS A MESSAGE

The goal that we should have in mind as we look at what actions have been taken subsequent to the discovery of a gross violation of everything that our export control regime and CoCom stands for is not just whether the directly guilty parties have been punished and a couple of people in Norway or Japan fired and maybe re-employed some place else, but what kind of action we should take that sends a message to not just the Toshiba's but to all the other high-tech companies in all the other CoCom countries that they as a company or as an exporter or as a producer are going to be as a company really at risk.

Very little in the way of corporate interests have been prejudiced by the action taken either in Norway or in Japan, and therefore there is no real incentive for the companies that are involved in this kind of trade or in the manufacture of this kind of technology, and when I say this kind I mean sensitive technology and not just propellers, to set up comprehensive control systems, internal control systems that will prevent the kind of blatant cheating that this case represents.

As long as the kinds of rather modest slaps of the wrist after the fact so-called punishment takes place the way it has there is really, frankly, no reason for the hundreds and thousands of people who deal and manufacture these kinds of technologies to do anything, which is why, and I've discussed this with Senator Garn, I will join with him in cosponsoring legislation that will place an embargo, maybe a temporary one, on the import of Toshiba electronics for 1 year or 5 years. You know, they make a lot of microchips and sell them in this country and they make a lot of consumer electronics.

And I don't suggest that I would be willing to join Senator Garn in that, or I'll do it myself if he doesn't want to do it, I don't express my support for that because I want to be punitive on Toshiba. That is not my goal, although frankly it will be punitive on Toshiba. It is principally to send all the other potential betrayers of CoCom and West a message. I don't see how anything less could really send a message.

Do you agree or disagree, Dr. Bryen?

Dr. BRYEN. Senator, I think that that's half of it and not the whole of it.

Senator HEINZ. I'm not saying it's the whole. I just asked if you agree or disagree?

Dr. BRYEN. This case is a little different because——

Senator HEINZ. I understand it's different from lots of things. I'm just asking you for a comment about the strategy.

Dr. BRYEN. Well, I said it's half. The other half——

Senator HEINZ. Well, if it's half, is that half right or half wrong?

Dr. BRYEN. It's half the problem because——

Senator HEINZ. Well, let's talk about that half for a minute.

Dr. BRYEN. Your solution is go after companies that you have leverage over, that is companies that have imports into the United States.

Senator HEINZ. That's right, and is that a good idea or a bad idea?

Dr. BRYEN. I think it's a good idea.

Senator HEINZ. OK. Thank you. Now you can talk about the other half.

Dr. BRYEN. The other half is the half of the companies that don't import into the United States or individuals who simply evade all sanctions and who are very much and very heavily in the business of smuggling United States and other Western technology to the Soviet bloc, and there is a lot of that.

Paul Freedenberg made the point a few minutes ago about a case where we had some of the neutral countries doing a somewhat better job than some of the allied countries, and it occurred to me while he was speaking that at least two major techno-bandits were in effect sheltered and the Federal Republic of Germany never took any action against them.

Senator HEINZ. I don't necessarily disagree with you, but where does that comment lead?

Dr. BRYEN. I think where that leads you is where it has led us to some extent, and that is, and I can't say that we have had any massive success because we have not, but it leads you to say that we have to find ways to get the laws in those countries really strengthened and to get vigorous prosecution of people who are wrongdoers.

Senator HEINZ. I don't think there is a single member of this committee who would disagree with you.

Let me ask you a different question.

Dr. BRYEN. I just want to observe that one of the curiosities of this particular instance is that the Soviet submarines will be equipped with propellers after the statute of limitations has expired both in Japan and Norway where you could take any action in those countries.

Senator HEINZ. Let me pursue something with you. I was not here to listen to Senator Garn's opening statement, but I gather he expressed some concern about the bill reported by this committee to the floor on the grounds that it might make it more difficult to stop cheating.

As I understand our bill, what we do is to permit the shipment without validated licenses, and this is how it's different from existing law, the shipment of items without validated licenses to CoCom countries if those items above AEN, and everything below AEN is decontrolled now, but no higher than PRC Greenline; is that correct? Is that a fair statement?

Dr. BRYEN. That's correct.

Senator HEINZ. And if the world consisted only of CoCom that wouldn't be a problem.

Dr. BRYEN. It would be a problem.

Senator HEINZ. The concern is diversion and the concern is the re-export to destinations in the Communist bloc; is that right?

Dr. BRYEN. Well, the concern is diversion, but the point we made about some of the CoCom countries, that you've been making, that Senator Garn has been making and you, Senator have been making is that they failed in their responsibility to handle goods that require licenses.

Senator HEINZ. Right. I'm just trying to make sure we have the facts right and I'm not disagreeing with you.

You I gather therefore have, like Senator Garn, some concerns about the committee bill. Now can you think of any technology that is above AEN level, which is a pretty darn low level of technology, and below PRC Greenline that is not broadly available from non-U.S. sources within CoCom?

Dr. BRYEN. I would have to go carefully and look at that, but——

Senator HEINZ. Dr. Freedenberg, you're really the person I should be asking I suppose, although I would like to think that everybody down there is well versed on this critical subject.

Dr. FREEDENBERG. Essentially, for example, on computers, machine tools and scientific instruments, essentially we have competitors among our major CoCom allies. They were talking about Japan, Germany, United Kingdom, France. They all make those products.

Senator HEINZ. So would it be fairly accurate to say that virtually every CoCom country makes sometimes a better and sometimes a not-as-good product as the United States in that band above AEN and below PRC Greenline?

Dr. FREEDENBERG. Probably the Big Seven and not all CoCom. CoCom is all of NATO plus Japan, and we have some who wouldn't.

Senator HEINZ. But the Big Seven.

Would you agree with that, Dr. Bryen?

Dr. BRYEN. No, I don't. Some don't make any.

Senator HEINZ. Yes, some don't, but let's talk about the Big Seven.

Dr. BRYEN. Well, you're talking about all of them.

Senator HEINZ. Well, I'm changing it.

Dr. BRYEN. OK. Fair enough.

Senator HEINZ. Now you can try and discuss this on the basis of technicalities or we can have a meaningful discussion, whichever you would like to do.

GREENLINE TECHNOLOGY

Dr. BRYEN. There are products that we believe that are bracketed by the technology, the so-called Greenline technology, that are fairly unique ones that are available primarily from U.S. sources.

Senator HEINZ. Like what?

Dr. BRYEN. Well, one of the main Soviet targeted items has been the VAX computers. Well, that's in the Greenline.

Senator HEINZ. That's above the Greenline.

Dr. BRYEN. No, it's in the Greenline. VAX computers are well within the Greenline.

Senator HEINZ. All right. And what countries make them besides the United States?

Dr. BRYEN. The United States makes it and we make it under license, that is a U.S. license which would disappear under your bill I think, and under license in Scotland. I would have to check the precise—it's either Scotland or Ireland.

Dr. FREEDENBERG. They make it in Ireland.

Senator HEINZ. And your contention is there are no comparable products available?

Dr. BRYEN. Not really.

Dr. FREEDENBERG. There are VAX clones, but clearly Digital is the best of the companies in that area. There are obviously copies of all computers, but Digital clearly makes the best.

Senator HEINZ. I should hope so.

Dr. FREEDENBERG. That's a plug for the United States.

Senator HEINZ. I wish we could say that about every American product.

Are you saying, Dr. Bryen, that this is a general rule or would you say this is more of an exception?

Dr. BRYEN. No. I think you'll find it's a mixed bag, that the Greenline consists of some products which are fairly unique to us and others that are not. I mean you have to keep in mind that it's defined technologically by brackets. So there are some things we specialize in, for example, some semiconductor manufacturing equipment that you can't buy elsewhere and there are probably some we don't make.

Senator HEINZ. Is it your view that if we make it, and I apologize, Mr. Chairman, I'll conclude with this last question. What would be your view of the following. If the U.S. made it more difficult for CoCom countries to purchase or reduce the desire of CoCom companies to purchase the kind of technology where we have a better product, and we're not the only people, but we have a better product, but because of our licensing requirements and paperwork and delays other countries try to avoid using us, as we know they are, just as much as possible, and we made it, as we tend to, difficult to export those products, do you think that that would make it more likely or less likely for other countries to develop technology that would be as good or better than the U.S. technologies that now set the standard worldwide?

Dr. BRYEN. Senator, I think, first of all, that the existing system that we have in respect to exports to the CoCom countries of goods which are by and large in the so-called China Greenline bracket are rather easily exported from the United States today either under valid permits or in many cases, the bulk of the cases under distribution license and bulk licenses to other countries. So I don't think it has any tangible effect on what stimulates them to develop competitive goods.

I think the issue here is overloading already dangerously weak licensing systems in the other countries with even more goods that are undefined.

May I give you a case in point.

Senator HEINZ. Well, I think you may. It's OK with me. I just want it to be OK with the Chairman.

Senator SARBANES. Go ahead.

Dr. BRYEN. If I may, we had a diversion about 1½ years ago of graphics equipment, pretty sophisticated equipment used in semiconductor manufacturing. It went through Belgium and it went without any paperwork. It was declared a diversion case, a smuggling case, and the biggest problem we had was getting it identified. The Belgium licensing officer, of which there is one person, was convinced that it wasn't even controlled.

The more goods that you throw into a system that is already ill-equipped to manage in terms of being recognized—and one of the functions that the Commerce Department performs in licensing is to identify what the goods are, whether they are controlled and for what reason and how to handle them—Take that away and you have these goods going into Western Europe and Japan and where we leave it up to them to handle it, and I don't think they have the wherewithal to do it.

Senator HEINZ. Well, just so we complete this, why wouldn't it make sense on those products which are clearly very high quality and there is no comparable quality available in CoCom to at least just have a paper trail rather than an entire validated licensing system? Why wouldn't that solve your problem?

Dr. BRYEN. I think it would if we had the enforcement in the other countries. That's get to the second half.

Dr. FREEDENBERG. I think that's important. Since the committee finished its markup I've been talking with committee staff about that same subject, which is to create a paper trail and ensure that we have some degree of enforcement so that we aid the licensing people in CoCom to make sure that they understand what these things that they are getting and that they get some recognition that it's coming into their country. I would just add to that point and I hope we can work something out on that.

Senator SHELBY. Mr. Chairman.

Senator SARBANES. Senator Shelby.

Senator SHELBY. My Chairman, I've got a couple of more observations and possibly questions.

AVOID STANDARD EXPORT BROKER

I was going over the chronological developing of this case, and without repeating it all, it's my understanding that Toshiba insisted that its standard export broker, Itoh, be used to avoid—that they be used where they could avoid raising the suspicions of Japanese licensing authorities. Is that right?

Dr. FREEDENBERG. I don't know which paper you have. Essentially a good part of this story has gone out on the front page of the New York Times.

Senator SHELBY. Well, this isn't the New York Times, though it's probably got a better reading than this does.

Dr. FREEDENBERG. I think it would be easier for the State Department or the CIA to comment on that. I don't know all the details of the chronology.

Senator SHELBY. Is that basically true, gentlemen? Is that right?

Dr. BRYEN. Yes, sir. I believe that is correct.

Senator SHELBY. It insisted, and here's Toshiba, you know, the giant company, insisting that it's standard export broker, Itoh, be used to avoid raising the suspicion of Japanese licensing authorities. OK, you're starting there. That's step one, and there are others. OK, you've got a big conspiracy there. And then the companies involved, the Norwegian and the Japanese companies, submitted a false end-user certificate stating the equipment was destined for a civilian facility located in Leningrad along with a degraded technical specification for the milling machines and numerical controllers, where in fact they knew that it was going to the Soviet Navy propeller ship facility at the Baltic shipyard. You know, they knew and they were trying to justify that it was going to be used for civilian uses, but they knew in fact what it was doing and they were trying to hide it. Is that basically true?

Dr. BRYEN. That's basically correct.

Senator SHELBY. OK. If you just take those by themselves, why wouldn't punitive measures be in order here rather than business as usual? You've got two companies here and one big one, Toshiba, still doing business as usual in the United States. Now you can say well, this is one of their subsidiaries, but they are responsible for this, and what have they done, among other things. They have undermined the basic security of this country, and then we are going to reward them by doing business.

I say that it's time that either we do it legislatively or you do it or initiate it and that you send out the word that if you're going to do business, you're going to do it right, and I believe you could get somebody's attention. But until you do do that, it's going to be dancing around the issue as you've done it, afraid to make somebody mad and afraid that you might harm somebody's trading interest, but who are they harming, the American people's strategic interests and the West, and they are getting a free ride as usual.

I would like to hear your comment.

Dr. BRYEN. I think there is one comment that is in order that hasn't really come out that's quite important here.

This is the first really serious effort in Japan now going on to prosecute people who have diverted technology to the Soviet Union. I know of only one other case which was handled administratively, and I know of no other case that has involved any criminal penalties or criminal action.

The investigation in Japan is not completed. There have been some indictments already,

Senator, I think there is an important principle here. I mean we are very disturbed about this, and you know how disturbed we are in the Defense Department about this matter. I was the one, along with Under Secretary Ikle who went to Japan in December to ask them to intervene and to take action on this, and not successfully. We tried for months after that to get action and it wasn't until April that they finally got off the dime and began to do something about it largely because Secretary Weinberger intervened in a very strong way.

But we were dealing with one situation then, and the situation I believe now has changed rather markedly. There is an extremely strong—let's not dismiss the fact that for the first one Japan is ac-

tually going at the people responsible and charging them in court with criminal violations and is bringing actions against them. Some administrative actions, which, I would agree with the committee, are rather mild ones, were taken initially, but we are well beyond that now. We are into a very major investigation.

In the end I think that it's important that each of the CoCom countries takes real responsibility or the system will never work. We can sit here and complain forever that they will always be one step ahead of us.

Senator SHELBY. Who is going to be one step ahead?

Dr. BRYEN. The people who are stealing the technology or diverting the technology because if it's not from a CoCom country they'll move it to a third country.

Senator SHELBY. But we're making it easy for them, aren't we?

Dr. BRYEN. Well, I think the whole system is weak, and I've said it——

Senator SHELBY. And if the system is weak, that's what we keep talking about. Why won't we go ahead and try to do something about it and put this at the top of the agenda, because most of the people, the Norwegians and the Japanese and others, they are interested in making a profit. They are not interested in their security, and their governments are basically looking the other way.

If they fail to enter into agreements that have strength to protect strategic interests or mutual multilateral stuff, they are looking the other way, and we're looking after their security needs and they are undermining that, and you know it, too.

Dr. BRYEN. I think there has been a change, and I think that——

Senator SHELBY. You think there has, but what's that based on, just because they're doing a few things because we're pressuring them some. Why don't we do something big and really get their attention?

Dr. BRYEN. The CoCom system has been in effect since the end of World War II, and as far as I know Japan never prosecuted anyone——

Senator SHELBY. And the KGB has continued to steal and buy everything in the world; is that correct?

Dr. BRYEN. Absolutely. That is right.

Senator SHELBY. OK. So you might as well not have had it as far as all the teeth it's had overall because they've been able to either steal or buy just about everything in the world, haven't they?

Dr. BRYEN. No, I don't think that would be their judgment, sir. I think the amount of diversion in our own view is still too high, but there has been a genuine improvement in many of the CoCom countries, and we're taking a rather broad view here. Many of the CoCom countries have really done a lot internally to strengthen their licensing system, to prosecute wrongdoing and overall to do a much better job. There has been a qualitative improvement. There are still some serious problems and the Japanese problem and the Norwegian one——

Senator SHELBY. But they are basically interested more in doing business with the Soviet Union in some way than they are interested in national security, and you have to agree to that. I mean, you know, they have basically cut more business deals that they have anything else, and if they've got something that will sell, and high

technology with a military application will always sell and there is a big market for it.

Dr. BRYEN. I really think that at least what we have heard up to now since the police investigation started in both countries involved, what we've heard from officials in both countries has been very strong and deep concern about the damage done in this incident and a great desire to try and make it right.

So I'm not willing to go as far as you are in that judgment, not at all. I think that we have got to, you know, in the end we've got to build up a kind of responsible trading community that has security in mind, and I don't know that you're going to get it——

Senator SHELBY. Security in mind, let me stop you a moment. What is more important, a trade or national security?

Dr. BRYEN. Oh, absolutely national security.

Senator SHELBY. OK. You said it's got security in mind. In other words, you're minimizing it by your own words, and that is why the things have been going on business as usual and that is why things like the State Department oversaw the building of the embassy in Moscow, and I know it has nothing to do with this, but it's the same old stuff.

Dr. BRYEN. Well, I would like to believe otherwise, and I think that——

Senator SHELBY. So would I, and I would like to see it.

Dr. BRYEN. But I think we are seeing some change. What I'm afraid of is that if we are too broad in our assertions in terms of how all the CoCom countries operate, we're not going to make progress.

I'm not saying to not be tough. We have been in the administration, as you well know, rather significant advocates of toughness, but I think we also ought to take advantage of the situation and not shoot ourselves in the foot over it and try and get some—we're going to get out of for sure in Japan and I think in Norway much strengthened statutes in terms of the criminal nature of these activities. I think we are going to have people convicted and that will help. We have a lot to do with the other CoCom countries——

Senator SHELBY. I think you've got a good opportunity and you're not seizing it, and maybe you don't see it. I would like to trust that you see it, but I'm not sure.

Thank you, Mr. Chairman.

Senator SARBANES. Well, gentlemen, thank you very much. We appreciate your testimony.

The committee stands adjourned.

[Whereupon, at 3:43 p.m., the subcommittee adjourned, subject to the call of the Chair.]

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